

APPEAL NO. 040149  
FILED MARCH 8, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on December 29, 2003. The hearing officer determined that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the 16th quarter. The appellant (carrier) appeal this determination. The appeal file contains no response from the claimant.

DECISION

Affirmed.

The carrier asserts on appeal that the hearing officer erred in determining that the claimant's compensable injury extends to and includes a closed head injury, cognitive disorder, and seizure disorder; however, extent of injury was not an issue before the hearing officer. A hearing was previously held to resolve the extent-of-injury issue and the hearing officer's decision in favor of the claimant was subsequently affirmed by the Appeals Panel In Texas Workers' Compensation Commission Appeal No. 031766, decided August 25, 2003. There is no indication that the Appeals Panel decision has been overturned by a court of competent jurisdiction. Accordingly, the carrier's arguments with regard to the extent of the claimant's compensable injury will not be further addressed.

Section 408.142 provides that an employee continues to be entitled to SIBs after the first compensable quarter if the employee: (1) has not returned to work or has earned less than 80% of the employee's average weekly wage as a direct result of the impairment; and (2) has in good faith sought employment commensurate with his or her ability to work. The carrier appeals both the direct result and good faith findings made by the hearing officer. We have stated that a finding of "direct result" is sufficiently supported by evidence that an injured employee sustained an injury with lasting effects and could not reasonably perform the type of work being done at the time of the injury. Texas Workers' Compensation Commission Appeal No. 950376, decided April 26, 1995; Texas Workers' Compensation Commission Appeal No. 950771, decided June 29, 1995. To meet the direct result requirement, one only need prove that the unemployment or underemployment was a direct result of the compensable injury. See Texas Workers' Compensation Commission Appeal No. 001786, decided September 13, 2000.

Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(4) (Rule 130.102(d)(4) states that the "good faith" criterion will be met if the employee:

has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury

causes a total inability to work, and no other records show that the injured employee is able to return to work[.]

Whether the claimant's unemployment was a direct result of his impairment and whether he satisfied the requirements of Rule 130.102(d)(4) were factual questions for the hearing officer to resolve. The hearing officer is the sole judge of the relevance, materiality, weight, and credibility of the evidence presented at the hearing. Section 410.165(a). The hearing officer noted that although there were records in evidence purporting to show that the claimant had an ability to work, the hearing officer did not find the records credible and explained her reasoning for so finding. Nothing in our review of the record indicates that the hearing officer's decision that the claimant is entitled to SIBs for the 16th quarter is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
800 BRAZOS, SUITE 750 , COMMODORE 1  
AUSTIN, TEXAS 78701.**

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Chris Cowan  
Appeals Judge

CONCUR:

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Gary L. Kilgore  
Appeals Judge

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Margaret L. Turner  
Appeals Judge